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No. 15] NEW DELHI, SATURDAY, APRIL 16, 1994/CHAITRA 26, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

## भाग II—खण्ड 3—उप-खण्ड (III) PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of Union  
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 4 अप्रैल, 1994

आ०अ० 35.—लोक प्रतिनिधित्व अधिनियम, 1951  
(1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन  
आयोग 1991 की अर्जी सं० 2, गुजरात उच्च न्यायालय,  
अहमदाबाद के तारीख 28-1-1994 के निर्णय को एतद्वारा  
प्रकाशित करता है।

[सं० 82/गुजरात-लो०सं०/(2/91)/94]

आवेश में,  
बलवन्त सिंह, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 4th April, 1994

O.N. 35.—In pursuance of section 106 of the Representa-  
tion of the People Act, 1951 (43 of 1951), the Election  
Commission of India hereby publishes the Judgement dated

853 GI/94

28th January, 1994, of the High Court of Gujarat at Ahme-  
dabad, in Election Petition No. 2 of 1991.

[No. 82/GJ-HP/(2 of 91)/94]

By Order,  
BALWANT SINGH, Secy.

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
Election Petition No. 2 of 1991

with

Election Application No. 6 of 1993

Shah Jayantilal Virehandbhai Taluka : Kankarej, Dist.  
Banaskantha —Petitioner

V/s.

Chavda Harisinh Pratapsinh Taluka : Palanpur. Distt.  
Banaskantha —Respondent

Returned Candidate.

Mr. P. M. Raval, Advocate, for the petitioner in the  
Election Petition and for the Opponent in the  
Election Application.

Mr. H. L. Patel, Advocate for the Opponent in the  
Election Petition and for the Applicant in the  
Election Application.

CORAM : K. G. SHAH, J.

28-1-1994

## ANNEXURE

ELECTION PETITION NO. 2 OF 1991

with

ELECTION APPLICATION No. 6 of 1993

Mr. K. G. SHAH

1—5 : No.

Mr. P. M. Raval, Advocate, for the Petitioner in the Election Petition and for the Opponent in the Election Application.

Mr. H. L. Patel, Advocate, for the Opponent in the Election Petition and for the Applicant in the Election Application.

CORAM : K. G. SHAH, J.

28-1-1994

## ORAL JUDGMENT

The aforesaid election petition has been moved by the petitioner under the provisions of Part-VI of the Representation of the People Act, 1951 (for short "the Act"). The petitioner has called in question the election of Chavda Harisinh Pratapsinh—the Respondent in the election petition, who has been declared elected as a Member of the Lok Sabha on the 14-Banaskantha Parliamentary Constituency, by the Notification dated June 16, 1991, on the ground that the Respondent had, during the election campaigning which preceded the election, which was held on June 15, 1991, resorted to various corrupt practices within the meaning of that expression as used in S. 123 of the Act.

2. According to the petitioner, the Respondent and/or others with the consent of the Respondent, had committed corrupt practice of undue influence as defined in S. 123(2) and S. 123(3-A) of the Act.

3. At the election that was held on June 15, 1991 for the Lok Sabha seat for 14-Banaskantha Parliamentary Constituency, the petitioner was one of the candidates. He was fielded by the Janta Dal (Gujarat). The Respondent was similarly a candidate who was fielded by the Bharatiya Janta Party for short "the BJP". According to the petitioner, the BJP withdrew its support to the Cabinet headed by Prime Minister Mr. V. P. Singh, and soon thereafter started preparations for general elections since it was evident that the general elections will be held. Thereafter, the minority Government of Mr. Chandra Shekhar continued in power upto March, 1991, and after the resignation of the Ministry headed by Prime Minister Mr. Chandra Sekhar, parliament was dissolved on or about March 6, 1991, and immediately thereafter the BJP started active campaigning for the election that was in the offing. It is the case of the petitioner that as an election strategy, a religious organisation named 'VISHWA HINDU PARISHAD' (for short "the VHP") brought all religious heads of Hindu Religion all throughout the country and All India Dharmasabha was held which decided to actively campaign for vote in general election for the party, who will construct the temple of Lord Ram at Ayodhya, delete Article 370 from the Constitution of India and establish Hindu Religious Rule in the country. It is the case of the petitioner that it was very well known since October, 1990, that the BJP had openly advocated and supported the agitation for the construction of the temple of Lord Ram at Ayodhya. It is further the case of the petitioner that in order to support the BJP, the VHP in so far as Banaskantha Constituency was concerned, resorted to different types of media propaganda as has been detailed in the petition. Firstly according to the petitioner, the VHP, started campaigning for the BJP by organising Dharma Sabha in different parts of the constituency right from April 21, 1991 onwards, and also started Dharmachakra Rath moving in different parts of the constituency and Dharma Sabhas. Workers of the VHP accompanied by the BJP workers started propaganda in the constituency. The petitioner avers that according to the information received by him, such an

activity of Dharma Chakra Rath started on or about May 11, 1991 all throughout the constituency. Propaganda was carried through this media of Chakra Rath by high-lighting the aforesaid three demands, viz. (1) construction of the temple of Lord Ram at Ayodhya (2) deletion of Article 370 from the Constitution of India, and (3) establishing Hindu Religious Rule in the country; and calling upon the people to vote for the party which would achieve the aforesaid three objectives. According to the petitioner, though the VHP did the propaganda in the aforesaid manner, it did not in so many words, appeal to the electorate to vote for the candidate fielded by the BJP. But that appeal was so apparent that it was not required to be spoken in so many words. According to the petitioner, the way in which the VHP approached the electorate appealing them to vote for a party which would strive for the aforesaid three objectives, was a clear appeal to the electorate to vote for the candidate fielded by the BJP. Further according to the petitioner, even the election manifesto of the BJP contained some of the objectives canvassed by the VHP.

4. It is also the case of the petitioner that Dharma Rath was taken out by the VHP from May 11, 1991, and Dharma Sabhas were also held by the VHP on April 23, 1991 at Thana, and Bhadhor, and one meeting was held on April 28, 1991 at Ramlila Maidan at Palanpur. The Dharma Chakra Rath was accompanied by religious heads having religious influence and control over the voters in the constituency. Similarly Dharma Sabhas were also addressed by highly respected religious heads, having wide influence as religious preachers over the people.

5. In the later part of paragraph 6 of the petition, the petitioner has catalogued various meetings held at different places between April 23, 1991 and June 10, 1991, for making propaganda in support of the BJP and its candidate at the parliamentary election that was going to take place on June 15, 1991. In that catalogue, the petitioner has given the dates and places where the meetings were held and he has also given the names of the speakers who addressed those meetings. One of the meetings which has been listed in the catalogue, according to the petitioner, is said to have been held on April 28, 1991, at about 16.30 hours at Ramlila Ground, Palanpur City, and it is the case of the petitioner that at that meeting, as many as 19 speakers addressed the audience. Many of those speakers were religious preachers and one of them was Sadhvi Shri Rutambharaji of Hardwar. The name of Sadhvi Rutambharaji is shown at Sr. No. 1 in the list of speakers who are said to have addressed that meeting held at Ramlila Ground, Palanpur City, on April 28, 1991 at about 16.30 hours. After giving the catalogue of the meetings and the speakers who addressed those meetings, in still later part of paragraph 6 of the petition, the petitioner has averred "the aforesaid meetings were addressed by the respondent as well as other leaders of Bharatiya Janta Party at national level and State level. In the aforesaid meetings the general theme of Bharatiya Janta Party was similar to that of Vishwa Hindu Parishad, viz. deletion of Article 370 from the Constitution of India, construction of temple of Lord Ram in place of Babari Masjid and consolidating Hindus under one flag and to establish Hindu Religious rule to the Centre."

It is also the case of the petitioner that at the aforesaid meetings, the speakers sought to incite Hindus by speaking about the atrocities committed by Muslims to Hindus in Kashmir.

6. In paragraph 7 of the petition, the petitioner has averred that in all the aforesaid meetings referred to by him in paragraph 6 of the petition, according to his information, the Respondent was present, and at those meetings, the religious heads and leaders delivered speeches calling upon the Hindus to vote for the respondent because the respondent was sponsored by BJP, and BJP was a party which was working for establishing Hindu Rule at the Centre, if it was returned to power. In that paragraph 7 of the petition, the petitioner then referred to certain speeches said to have been made by certain religious heads at the meetings that was held on April 23, 1991, at Thana. In paragraph 8 of the petition, the petitioner has referred to another meeting held at Bhabhar. According to the petitioner, at that meeting, the Respondent was present and at that meeting some religious preachers and other speakers made inflammatory speeches. According to the petitioner, the speakers who addressed the aforesaid two meetings—one held at

Thara and the other held at Bhabhar, committed corrupt practice of undue influence within the meaning of S. 123(2) of the Act, as also the corrupt practice as defined in S. 123 (3A) of the Act. It is also the case of the petitioner that at the aforesaid two meetings, the respondent also addressed the audience and drew the attention of the audience to the speeches made by the religious preachers, and appeared to the audience to vote for him as he was fielded as a candidate by the BJP. According to the petitioner the Respondent, by doing so, endorsed the views of the religious preachers and thus, he himself committed the corrupt practices within the meaning of the expression as given in Sections 123(2) and 123(3-A) of the Act.

7. In paragraph 9 of the petition, the petitioner has referred to one meeting that was held on 23-4-1991. According to the petitioner, that meeting was apparently organised by the VHP in support of the respondent. It is further the case of the petitioner that at that meeting, a strategy was evolved by the VHP, the BJP and the Respondent to the effect that Saints and Mahatmas and Office-bearers of the VHP would sit on the dais whereas the candidates and leaders of the BJP would sit on the ground so that they may not be conspicuous in the meeting. However, according to the petitioner, that meeting was attended by Mahant Shree Sitaram Bapji of Ramji Mandir, Palanpur, Shri Amardasji Babji, Virpur, Shri Shivanand Atmaram Maharaj, Ghogha, Bhavnagar and Shri Pravinbhai Togadia, the President of the VHP at the State level. It is further the case of the petitioner that that meeting was also attended by the Respondent and one Shri Arvind Trivedi, a BJP candidate from Sabarkantha in company of Shri Lekhranj Bachani, MLA from Palanpur, and other leaders. According to the petitioner, that meeting was addressed inter alia by Shri Pravinbhai Togadia, by making fiery and inflammatory speeches, which would promote enmity and hatred between Hindus and Muslims. It is the case of the petitioner that though other leaders were also the speakers at that meeting, the main speaker in the said meeting was Sadhvi Rutumbhara Devi, and till the time Sadhvi Rutumbhara Devi arrived at the venue of the meeting, the other speakers engaged the attention of the audience by making fiery and inflammatory speeches, and appealed to the audience in the name of Hindu religion to vote for the BJP candidate. Thereafter, according to the petitioner, Sadhvi Rutumbhara Devi came at the meeting at about 5.30 P.M. and delivered her speech for about an hour. As soon as she arrived, she was garlanded by Shri Arvind Trivedi, a returned candidate from Sabarkantha. Shri Suresh Oza, the President of the Palanpur Municipality, belonging to the BJP and others. According to the petitioner Sadhvi Rutumbhara Devi in her speech, at first, explained as to how Saints and Mahants have come out from Mandir and Math and decided to save Hindu religion. Referring to Ram Janmabhoomi—Babri Masjid dispute, she referred to the atrocities committed by Muslims over Hindus in Kashmir. She also raised certain slogans. She stated that she would continue the agitation and it was the directive to the people to continue the agitation till the construction of Shri Ram Temple at Ayodhya. Vishwanathiji at Kashi and Lord Krishna at Mathura was accomplished. She stated that there is no Babri Masjid at Ayodhya, and there is only the temple of Lord Ram there. She exhorted the audience that the construction of Shri Ram Temple at Ayodhya should be made at any cost for, it is the question of 85-crore Hindus. She, in her speech also said that they had already been telling the Muslims to mix with Hindus as sugar mixes with milk. However, Muslims do not act like milk and sugar, but they are acting like lemon, so that if lemon is added to milk, milk is split though it become valuable. She said that Muslims should decide whether they wanted to stay with Hindus in India. She exclaimed as to how was it that Muslims do not accept to play Holi with Hindus, and why was it that they were opposed to listening to temple bells at the time of Ajan, though Hindus did listen to Ajans of Masjid alongwith the temple bells. Then she highlighted the different ways in which Muslims differ from Hindus and exhorted Hindus to show their strength. She said that we should have Ram Bhaktas for ruling at Delhi and for that purpose Hindus should prepare themselves. She criticised the conduct of Prime Ministers Shri V. P. Singh, Shri Chandra Shekhar and Shri Rajiv Gandhi.

According to the petitioner, the entire address of Sadhvi Rutumbhara Devi was an act of corrupt practice within the definition of that expression as given in S. 123(2) of the Act. It is the case of the petitioner that at the aforesaid meeting the main theme of the speakers including that of Sadhvi Rutumbhara Devi was to seek vote for the BJP candidate by rallying all Hindus under one roof for voting to power the BJP and its candidates, who were for construction of the temple of Lord Ram at Ayodhya. It is further the case of the petitioner that the speakers, including Sadhvi Rutumbhara Devi, at the aforesaid meeting, incited Hindus with a view to promote a feeling of enmity and hatred against Muslims, and thus, those speakers committed corrupt practice within the provisions of Section 123(3-A) of the Act.

In the last lines of paragraph 9 of the petition, the petitioner has stated that both the aforesaid corrupt practices, one under Section 123(2) and the other under Section 123 (3-A) of the Act, committed by the speakers at the meetings were committed by them with the consent of the Respondent.

8. In paragraph 10 of the petition, the petitioner has referred to another election meeting dated June 3, 1991, held at Deesa, where the speakers committed corrupt practices within the provisions of Section 123(2) and Section 123 (3-A) of the Act. In paragraph 11 of the petition, he has referred to various other meetings. In paragraph 12 of the petition, he has referred to another meeting held on June 10, 1991, at Deesa where Uma Bharati, is said to have delivered fiery and inflammatory speech to the audience.

9. In paragraph 14 of the petition, the petitioner has averred that he has learnt from the press reports that a complaint has been lodged against Sadhvi Rutumbhara Devi by the police, for the speech made by her at Palanpur. According to him, he has also reliably learnt that the video cassettes and audio cassettes of the aforesaid meetings had been taken, but he (the petitioner) is not presently in possession of further details about such video and audio cassettes. He has also stated that he has come to know that the audio cassettes of the speeches of Sadhvi Rutumbhara Devi and other saints and mahants were also recorded because all these were displayed all throughout the constituency.

10. In paragraph 15 of the petition, the petitioner has stated that apart from the corrupt practices committed by the Respondent and others with the consent of the Respondent, referred to by him in the earlier paragraphs of the petition, the VHP and the BJP had displayed video cassette of Sadhvi Rutumbharaji at Ahmedabad, Palanpur, and in different parts of the constituency and they have thereby committed corrupt practices as defined under Sections 123(2) and 123(3-A) of the Act, with the consent of the respondent. According to the petitioner he has set out as full statements and particulars including the persons who attended the meetings, the names of the persons who committed corrupt practice, etc. With this statement, towards the end of paragraph 15 the petitioner craved leave to give further particulars of those corrupt practices as and when required.

11. Elsewhere in the petition, the petitioner has referred to other meetings and corrupt practices committed by the respondent and other followers of the VHP and the BJP.

12. On the aforesaid premises, the petitioner has prayed for a declaration that the election of the respondent to the 14-Banaskantha Parliamentary Constituency is void.

13. The Respondent has, by his written statement Exh. 5 traversed all the averments made by the petitioner in the petition.

14. Thereafter the Respondent has taken out Election Application No. 6 of 1993, wherein the Respondent has made references to the certain parts of the election petition, where the petitioner has referred to the audio and video cassettes, prepared at the meetings about which the petitioner has made references in the petition. According to the Respondent in his written statement, he has averred that the petitioner is guilty of breaches of the mandatory provisions of sub-section 3 of Section 81, and sub-section (1) of Section 83 of the Act, and therefore, the petition is required to be dismissed under Section 86 of the Act.

According to the Respondent, the audio cassettes and the video cassettes of the speeches of Sadhvi Rutumbharaji and of the other saints and mahatmas about which the petitioner has so eloquently spoken in his petition are not supplied to him. It is the case of the Respondent that the said audio cassettes and video cassettes are the integral part of the petition, without which the petition would be incomplete. According to the Respondent, firstly, as the petitioner has not annexed to the petition the copies of the said audio and video cassettes, and secondly because the petitioner has not supplied to him (the respondent) the copies of those audio and video cassettes, referred to in the petition, the petition is liable to be dismissed. On these grounds in Election Application No. 6 of 1993, the respondent has prayed for the dismissal of the election petition in limine.

15. To the Election Application No. 6 of 1993, the petitioner has filed his reply wherein he has firstly contended that he is not in possession of the audio and video cassettes about which he has made copious references in his petition; therefore, he could not have produced the copies of those cassettes alongwith the petition, nor could he have been able to supply the copies of those cassettes to the Respondent alongwith the copy of the petition served to the respondent. Secondly, according to the petitioner, the audio and video cassettes are merely evidence of the allegations made in the petition and they are not required to be annexed to the petition, as they are not the integral part of the petition.

Thus the petitioner opposes the election application of the respondent, firstly on the ground that the audio cassettes and the video cassettes cannot be said to be an integral part of the election petition, though of course, they might furnish evidence about the allegations made in the election petition; therefore, he is not duty bound to annex the copies of the audio cassettes and video cassettes to his election petition, nor is he obliged to supply to the respondent, the copies of those cassettes. Secondly, according to the petitioner, as he is not in possession of those copies, he cannot be expected to supply either to the court or to the respondent the copies of those cassettes.

16. As, by the Election Application No. 6 of 1993, the Respondent has raised a preliminary objection to the maintainability of the election petition itself, I have heard Mr. H. L. Patel, L.A. for the Respondent and Mr. P. M. Raval, L.A. for the petitioner on this election application.

17. As is clear from the various averments in the election petition, the case of the petitioner inter alia is that at the meeting that was held at Palanpur on April 23, 1991, Sadhvi Rutumbharaji who was the main speaker, and who addressed the audience for about one hour made fiery and inflammatory speeches, exhorting Hindus against Muslims in the name of Shri Ramjanmabhoomi-Babri Masjid dispute. She castigated the Muslims in no uncertain terms and in many a way, she openly denounced Muslims, and appealed to Hindus to vote for the BJP. According to the petitioner, the Respondent was present at that meeting and as has been clearly averred by the petitioner in the last sentence of paragraph 9 of the petition, the corrupt practices which came to be committed by the speakers at that meeting were committed by them with the consent of the respondent.

18. Under Section 100 of the Act, if a corrupt practice has been committed either by a returned candidate or by his election agent or by any person with the consent of the returned candidate or of his election agent, then the election of the returned candidate is liable to be declared as void. This statutory provision would make it clear that even if a corrupt practice at the election has been committed by anybody with the consent of the returned candidate, the election of the returned candidate is liable to be declared as void. In the present case, inter alia the petitioner avers that Sadhvi Rutumbharaji committed corrupt practice by inciting Hindus against Muslims in her fiery and inflammatory speeches and that she did so with the consent of the respondent. Further according to the petitioner, the audio cassettes and the video cassettes of the meeting at which Sadhvi Rutumbharaji made the aforesaid speeches were prepared and they were displayed at various places including Palanpur—a place which is situated in the constituency from which the respondent has been declared as a returned candidate, and by displaying such

audio and video cassettes also, corrupt practice with the consent of the respondent has come to be committed and that would require this court to declare the election of the respondent as void. In paragraph 15 of the petition, the petitioner has, in unequivocal terms averred that it was with the consent of the respondent that corrupt practice within Sections 123(2) and 123(3-A) of the Act has been committed by displaying the audio cassettes and video cassettes of the meeting of Sadhvi Rutumbharaji at Ahmedabad, Palanpur and other different parts of the constituency. Thus, it is the clear case of the petitioner that with the consent of the respondent who is the returned candidate, corrupt practices have been committed. One of the corrupt practices alleged to have been committed is by displaying the audio and video cassettes giving coverage to the meeting of Sadhvi Rutumbharaji held at Palanpur on April 23, 1991.

19. It is not in dispute that alongwith the election petition, the petitioner has not annexed the copy of the audio cassette or the video cassette covering the meetings addressed by Sadhvi Rutumbharaji at Palanpur on April 23, 1991. It is equally not in dispute that copies of such cassettes have not been supplied alongwith the copy of the election petition for being supplied to the Respondent. It is the case of the Respondent that in view of the averments in the petition, the audio cassettes and the video cassettes form an integral part of the petition and such copies having not been annexed to the petition, the petition is incomplete and is liable to be dismissed as it does conform to the mandatory required of Sections 81 and 83 of the Act.

20. According to Mr. H. L. Patel, L.A. for the Respondent, the audio cassettes and video cassettes covering the meetings of Sadhvi Rutumbharaji are integral parts of the election petition, and as the copies of such cassettes have not been supplied to the respondent, there is breach of the mandatory requirement of S. 81(3) of the Act, which should entail the dismissal of the petition.

Mr. Raval, L.A. for the petitioner, on the other hand, submitted that firstly the video cassette and the audio cassette covering the speeches of Sadhvi Rutumbharaji cannot be said to be an integral part of the petition therefore, and secondly, as the petitioner is not in possession of such cassettes, the petitioner cannot be obliged to file alongwith the petition, the copies of such video cassettes and audio cassettes, nor could he be obliged to supply the copies of such cassettes for being furnished to the respondent, and the petition cannot be dismissed on the ground that the petitioner has not supplied copies of such audio and video cassettes to the court or to the respondent.

21. At the bar, various authorities were referred to by the learned advocates for the parties.

In *Ch. SUBBARAO vs. MEMBER, ELECTION TRIBUNAL, HYDERABAD AND OTHERS*, AIR 1964. S. C. p. 1027, it has been posited :

“When S. 81(3) requires an election petition to be accompanied by the requisite number of copies, it becomes a requirement for the presentation of the election petition to the Commission, and therefore, a condition precedent for the proper presentation of the election petition. If that is a requirement of S. 81, no distinction can be drawn between the requirements of sub-section (1) and (2) and of sub-section (3). If there is a total and complete non-compliance with the provisions of S. 81(3), the election petition might not be “an election petition presented in accordance with the provisions of this part” within S. 80 of the Act. If there had been such a non-compliance with the requirement of sub-sec. (3) not merely the Election Commission under S. 85 but the Election Tribunal under S. 90(3) would prime facie not merely be justified but would be required to dismiss the election petition.”

In that decision, however, it has been held that “if there is substantial compliance with the requirements of S. 81(3), the election petition cannot be dismissed by the Tribunal under S. 90(3)”.

22. In *SMT. SUHODRABAI RAI vs. RAM SINGH AHARWAR AND OTHERS*, AIR 1968, S.C. p. 1079, it is observed as follows :

"Under the Representation of the People Act, details of corrupt practice or averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if the requirement regarding service of the election petition is to be wholly complied with. But this does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petition. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof."

23. In *JAGAT KISHORE PRASAD NARAIN SINGH vs. RAJENDRA KUMAR PODDAR AND OTHERS*, AIR 1971, S. C. p. 342, in Annexure 'C', relating to the particulars of corrupt practice mentioned in paragraph 25 of the election petition, it had been stated in the original that Shri Munshi Hansda, M.L.A., had offered money and promised to pay money to Shri Jetha Kisku, M.L.A. for casting his first preference vote in favour of Respondent No. 1 at the M.L.A. Flat on 19-3-1968, but in Exh. 'O' (that was the copy of the petition supplied to the Respondent), mention had been made of the name of Paul Hansda, M.L.A. as the alleged offerer of money to Shri Jetha Kisku, M.L.A. In that case, the petition was dismissed inter alia on the ground of discrepancy between what was stated in the original petition and what was stated in the copy of the petition which was supplied to the Respondents. Their Lordships of the Supreme Court referred to the decision in the case of *Ch. SUBBARAO*, AIR 1964, SC p. 1027 (supra), and with reference to the judgment of the trial court said :

"Admittedly Shri Munshi Hansda and Paul Hansda are members of the Patna Legislative Assembly. In the election petition it was stated that money was offered to Shri Jetha Kisku, M.L.A. by Munshi Hansda, but in Exh. 'O' it was stated that money was offered by Paul Hansda. This divergence was bound to mislead the contesting respondents and prejudice their defence. Pleadings in a case has great importance and that is more so in election petitions particularly when the returned candidate is charged with corrupt practice. He must know what the charge against him is so that he may prepare his defence. If relying on the allegations in the copy of the petition served on him that the money was paid to Jetha Kisku through Paul Hansda, the 1st Respondent had collected evidence to show that the allegation is false, then the entire basis of his defence would have fallen to the ground because at a later stage he had to meet a totally different case. The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore, we have no doubt in our mind that the election petition is liable to be dismissed under Sec. 86 of the Act."

24. In *M. KARUNANIDHI vs. H. V. HANDA*, AIR 1984, S. C. p. 558, in the election petition, it was averred that the returned candidate was guilty of corrupt practice under sub-sec. (6) of S. 123 of the Act by incurring or authorising expenditure in contravention of S. 77. It was alleged that he had failed to disclose certain items of expenditure in his statement of election expenses filed by him in connection with the election. The allegation related to an expenditure of about Rs. 50,000/- in erecting fancy banners throughout the constituency and it was alleged that there were such fancy banners about 50 in number, the cost of each banner being not less than Rs. 1,000. It was averred that, a photograph of one such banner was filed alongwith the petition. Though

the petitioner had filed with the election petition, a photograph of one such banner, a copy of the photograph was not annexed to the copy of the petition furnished to the returned candidate.

On these facts, the Supreme Court held :

"That the photograph was a part of the averment contained in the petition. In the absence of the photograph, the averment contained in the petition would be incomplete. The photograph was therefore, an integral part of the election petition. It follows that there was a total non-compliance with the requirements of sub-section (3) of Sec. 81 of the Act by failure to serve the appellant with a copy of the election petition. The words "copies thereof" in sub-section (3) of Sec. 81 read in the context of sub-sec. (2) of S. 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein."

25. In *MITHILESH KUMAR PANDEY vs. BAIDYA-NATH YADAV AND OTHERS*, AIR 1984, S. C. p. 305, it has been enunciated that "before the election petition can be entertained, the copy sent to the elected candidate must be a true copy, falling which there would be a serious disobedience of the mandate contained in S. 81(3) which would be fatal to the maintainability of the said petition. To determine the question of non-compliance of Sec. 81(3) the following principles are well established :

- (1) That where the copy of the election petition served on the returned candidate contains only clerical or typographical mistakes which are of no consequence the petition cannot be dismissed straightway under Section 86;
  - (2) A true copy means a copy which is wholly and substantially the same as the original and where there are insignificant or minimal mistakes, the court may not take notice thereof;
  - (3) Where the copy contains important omissions or discrepancies of a vital nature, which are likely to cause prejudice to the defence of the returned candidate, it cannot be said that there has been a substantial compliance of the provisions of Section 81(3) of the Act;
  - (4) Prima facie, the statute uses the words "true copy" and the concept of substantial compliance cannot be extended too far to include serious or vital mistakes which shed the character of a true copy so that the copy furnished to the returned candidate cannot be said to be a true copy within the meaning of Sec. 81(3) of the Act;
- AND
- (5) As Section 81(3) is meant to protect and safeguard the sacrosanct electoral process so as not to disturb the verdict of the voters, there is no room for giving a liberal or broad interpretation to the provisions of the said section."

In that case, there were allegations of corrupt practice. Schedule-I to the election petition contained the list of persons through whom the corrupt practices were alleged to have been committed. In the copy of the petition supplied to the returned candidate there were mistakes as regards the names of the persons in the aforesaid list, viz. complete omission of some names which had been mentioned in the election petition, but not in the copy, giving wrong names, and some names given in the petition appeared to be males but in the copy they appeared to be females.

On these facts, it was held that ".....the mistakes in the copy of election petition were vital and would seriously

prejudice the defence. In the circumstances, the election petition was liable to be dismissed in limine."

26. In **RAJENDRA SINGH vs. SMT. USHA RANI AND OTHERS**, AIR 1984, S. C. p. 956, it has been held :

"A perusal of Section 81(3) and 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if an election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under S. 86. It is no part of the duty of the respondent to wade through the entire record in order to find out which is the correct copy. If out of the copies filed, the respondent's copy is found to be an incorrect one, it amounts to non-compliance of the provisions of S. 81(3) which is sufficient to entail a dismissal of the election petition at the behest."

27. Mr. H. L. Patel, L.A. for the Respondent very heavily relied upon the decision in the case of **U. S. SASIDHARAN vs. K. KARUNAKARAN AND ANOTHER.**, AIR. 1990 S. C. p. 924. That was also a case of Video Cassette. In that case the appellant before the Supreme Court was a voter of Mala Constituency of the Kerala Legislative Assembly. The election of the members of the Assembly was held on March 23, 1987, and the first respondent before the Supreme Court, who was then the sitting Chief Minister of the State of Kerala, was declared elected from Mala Constituency. The appellant challenged the election of the first respondent on various grounds. In paragraph 5(xi) of the election petition, the petitioner inter alia stated as follows :

"5(xi) . . . Besides at the instigation of the first respondent a video cassette called "Malayude Purogathi" has been used in the constituency. The persons who speak are one Shri Jose P. George, Government Pleader, Kerala High Court, 2. Shri Thomas Thottappally, Veterinary Doctor, Veterinary Polyclinic, Valiyaparambu. This is also a corrupt practice. The video cassette is produced herewith in a sealed cover."

The video cassette referred to in paragraph 5(xi) of the petition was annexed to that petition in a sealed cover. However admittedly, the copy of the video cassette was not supplied to the first respondent. The High Court came to the finding that the allegations in the petition would really show that the video cassette forms an integral part of the election petition and therefore, it was necessary to serve a copy thereof on the first respondent, and that having not been done, the election petition was dismissed under S. 86(1) of the Act. The question before the Supreme Court in that case was whether the video cassette in question could be said to be the integral part of the election petition. Their Lordships of the Supreme Court analysed the scheme of Ss. 81(3), 83 and 86(1) of the Act. With reference to Clauses (a) and (b) of S. 83 of the Act. Their Lordships have said that an election petition shall contain a concise statement of the material facts, and also set forth full particulars of the corrupt practices. These two requirements are also mandatory in nature. So whenever there is an allegation of corrupt practice, the election petition shall contain a concise statement of the material facts and must also set forth the full particulars of the corrupt practice alleged by the petitioner.

In paragraph 13 of the report, Their Lordships have said that when a candidate gets himself elected by adopting or committing any corrupt practice, his election must be set aside on proof of such corrupt practice. At the same time, the procedure prescribed by the Act for challenging an election must be strictly followed. So, if there be any deviation from or non-compliance of the provisions of S. 81(3), the Court will have no other alternative than to dismiss the election petition. In that case, before the High Court, the grievance about the copy of the petition served to the returned candidate being not a true copy was based upon non-supply to the returned candidate, copies of the notice, photograph and the video cassette. However, before the Supreme Court, ultimately the matter boiled down to the case arising from the non-supply of the video cassette to the returned candidate.

In paragraph 15 of the report, Their Lordships said that "the material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice, may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition, and a copy of such document is not furnished to the respondent alongwith a copy of the election petition, the copy of the petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under S. 86(1) for non-compliance with Section 81(3)."

28. In paragraph 16 of the report, Their Lordships said that "on the other hand, if the contents of the document in question are pleaded in the election petition, the document does not form an integral part of the election petition. In such a case, a copy of the document need not be served on the respondent and that will not be non-compliance with the provision of Sec. 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent alongwith a copy of the election petition."

In paragraph 17 of the report, Their Lordships have said that when the document forms an integral part of an election petition containing material facts or particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the Respondents.

29. In view of the aforesaid principles which came to be deduced by the Supreme Court, Their Lordships, in paragraph 18 of the report, considered the question whether the Video cassette in that case, which was mentioned in paragraph 5(xi) of the election petition, formed an integral part of the election petition. In that case, though the video cassette was produced in a sealed cover alongwith the election petition, admittedly, a copy thereof was not served to Respondent No. 1. It was urged on behalf of the appellant before the Supreme Court that the video cassette was only an evidence of the facts stated in paragraph 5(xi) of the election petition. It was alleged in that case that at the instigation of the first respondent, the video cassette called "MAI AYUDE PUROGATHI" has been used in the constituency. It was further alleged that the persons whose speeches have been recorded in the video cassette regarding "Progress of Mala" are two Government Officers named in paragraph 5(xi), and that the cassette has been used in the constituency at the instigation of the first respondent. This had been averred as a corrupt practice. It was also mentioned in that paragraph 5(xi) that the video cassette was produced with the election petition in a sealed cover. The corrupt practice that was alleged in paragraph 5(xi) fell within S. 123(7) of the Act. Relying upon the wording of S. 123(7) of the Act, it was contended on behalf of the appellant before the Supreme Court that the speeches of the Government Servants as recorded in the video cassette, and alleged to have been used in the constituency at the instigation of the first respondent were not alleged in the election petition to have been used with view to obtaining or procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospects of the first respondent's election. The Supreme Court negatived that contention.

In paragraph 21 of the report, the Supreme Court said that "it is true that there is no allegation in paragraph 5(xi) that the video cassette was used by the first respondent for the purpose of any assistance for the furtherance of the prospects of his election. But, in the opinion of Their Lordships, it was apparent that such an allegation was implied in that paragraph. After alleging that the video cassette was used in the constituency at the instigation of the first respondent, it was

alleged that the same constituted a corrupt practice which points to the only fact that the video cassette containing the speeches of the Government Servants was used for the purpose of some assistance for the furtherance of the prospects of the election of the first respondent. "It was implied", said the Supreme Court, that "the video cassette is referred to in paragraph 5(xi) in regard to the alleged assistance for the furtherance of the prospects of the election of the first respondent, and accordingly, the contents of the cassette are incorporated in that paragraph by reference. In other words, the cassette formed an integral part of paragraph 5(xi)."

In paragraph 22 of the report, Their Lordships have pointed out that it was clear from Item No. 1 of the List of Documents that it was the specific case of the appellant that the video cassette was prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition. Whether it was so stated in Item No. 1 of the List of Documents or not, it was, as stated already, apparent on the face of the allegation in paragraph 5(xi) that it was used by the first respondent by way of assistance in furtherance of the prospects of his election, and so the video cassette formed an integral part of paragraph 5(xi). Their Lordships there held that "unless a copy of the video cassette was given to the first respondent, he would not know how the speeches of the said Government Servants could assist the furtherance of the prospects of his election and would not be in a position to deal with the allegations made in paragraph 5(xi). The copy of the election petition which was served on the first respondent without a copy of the video cassette was not, therefore, a true copy of the election petition within the meaning of Section 81(3) of the Act."

30. In paragraph 26 of the report, their Lordships considered the judgment in the case of *M. KARUNANIDHI vs. H. V. HANDA*, A.I.R. 1983 S.C. p. 558, and Their Lordships said that that was the most important case for their purpose. I have hereinabove referred to that judgment in the case of *M. KARUNANIDHI*.

31. As noticed above, in the case of *M. KARUNANIDHI* (supra), the allegation of corrupt practice was based on the fact that the returned candidate had incurred or authorised to incur expenditure for election in contravention of S. 77. In that connection, it was alleged that the returned candidate had got erected fancy banners throughout the constituency and spent about Rs. 50,000 in so doing. A photograph of one of the banners was annexed to the petition, but the copy thereof was not supplied to the returned candidate. On those facts, the Supreme Court held that the photograph was a part of the averments contained in the petition, and in absence of the photograph, the averments contained in the petition would be incomplete. The photograph was therefore, an integral part of the election petition, and as the copy thereof was not served to the returned candidate, the petition was liable to be dismissed as the same did not conform to the mandatory requirement of S. 81(3) of the Act.

In the case of *U. S. SASIDHARAN* (supra) also the speeches of Government Servants were said to have been recorded on a video cassette. The video cassette was produced before the court in a sealed cover with the election petition, but a copy thereof was not supplied to the returned candidate-Respondent No. 1 in that case. The Supreme Court once again held that the video cassette formed an integral part of the election petition, and the copy thereof having not been supplied to the Respondent, the petition was liable to be dismissed under Section 86(1) of the Act and it did not conform to the mandatory requirement of S. 81(3) of the Act.

These two judgments, in my opinion, squarely apply to the facts of the present case.

32. I have hereinabove, in extenso referred to the averments made by the petitioner in the petition. In the petition, the petitioner has contended that the VHP organised meetings at which election propaganda for BJP and its candidate (i.e. the Respondent) was made. The petitioner further alleged that at many of such meetings, the Respondent remained present. Coming to the relevant meeting held at Palanpur

on April 23, 1991, at which Sadhvi Rutumbharaji made speech which is said to be fiery and inflammatory and which is said to constitute corrupt practice at the election, it is allegation of the petitioner that not only the respondent—the returned candidate was present at that meeting, but according to the petitioner, corrupt practice by the speakers including Sadhvi Rutumbhara Devi was resorted to under the consent of the Respondent. It is the case of the petitioner that the proceedings of that meeting were recorded on audio and video cassettes. It is further the case of the petitioner that those audio and video cassettes were thereafter displayed at Palanpur and other places and that was also done with the consent of the respondent.

Thus according to the petitioner, Sadhvi Rutumbhara Devi and other speakers who addressed the audience at the meetings referred to in the petition including the meeting dated April 23, 1991, held at Palanpur, committed corrupt practice with the consent of the Respondent. The petitioner, in order to have the election of the Respondent set aside, thus heavily relies upon the corrupt practice committed by Sadhvi Rutumbhara Devi and other speakers, with the consent of the Respondent. Allegations on these lines have been extensively made in the petition. However, in absence of the video and audio cassettes these allegations would be incomplete for the proceedings of the meetings have been recorded in a video cassette. It is not disputed that the video cassette would be a document. Therefore, the proceedings of the meeting have been recorded on a document which is a video cassette. The petitioner has, as a part of his petition, averred corrupt practice having been committed by Rutumbhara Devi and other speakers, with the consent of the Respondent. That would certainly be a material on which the petitioner relies for having the election of the respondent set aside, within the meaning of the expression "material fact" as used in Section 83(1)(A) of the Act. The same fact would also be the particular of the corrupt practice that the petitioner alleges within the meaning of the expression "particulars of the corrupt practice" as used in Section 83(1)(b) of the Act. According to the petitioner, Rutumbhara Devi committed corrupt practice with the consent of the respondent. Further according to him, as stated by him in paragraph 15 of the petition, the VHP and the BJP had displayed video cassettes covering the speeches of Sadhvi Rutumbhara Devi, at Ahmedabad, Palanpur and in different parts of the constituency with the consent of the respondent, and had thus committed corrupt practice as defined under Section 123(2) and Section 123(3)(A) of the Act. The case of the petitioner on this line is very much similar to the case of *U. S. SASIDHARAN* (supra), where also, the Supreme Court was concerned with the case of a video cassette on which the speeches of the Government servants were said to have been recorded, and the copy of the cassette was not given to the returned candidate. Applying the same test as has been applied by Their Lordships of the Supreme Court in the case of *U. S. SASIDHARAN* (supra), I have no doubt in my mind that the video cassette on which the speeches of Rutumbhara Devi made by her at the Palanpur meeting on April 23, 1991, have been recorded does form an integral part of the election petition. Copy thereof having not been given to the Respondent, the election petition supplied to the Respondent is not a true copy. There was, therefore, breach of the mandatory requirement of S. 81(3) of the Act, and the petition is, therefore, liable to be rejected under S. 86(1) of the Act.

33. According to Mr. Raval, I.A. for the petitioner, whereas in the case of *M. KARUNANIDHI* (supra), the photograph in question was produced alongwith the election petition, and whereas in the case of *U. S. SASIDHARAN* (supra), the cassette was produced in a sealed cover alongwith the election petition. In the present case, the petitioner has not produced the video cassette or the copy thereof alongwith the petition, and that would be a feature which would distinguish the case before me from the cases of *M. KARUNANIDHI* (supra) and *U. S. SASIDHARAN* (supra). I think the argument cannot be accepted. Whether the original cassette was or was not produced alongwith the election petition, would not be that material as the question whether the cassette in question forms an integral part of the election petition. The fact that the copy of the video cassette has not been produced alongwith the election petition would rather weaken the case of the petitioner and would render the case of the petitioner before me even worse than the cases of *M.*



KARUNANIDHI (supra) and U. S. SASIDHARAN (supra). If the argument of Mr. Raval as above is accepted, then the petitioner in an election petition can easily get away from the mandatory requirement of Section 81(3) of the Act by not producing the document which forms an integral part of the petition, alongwith the petition. The petitioner would conveniently not produce along with the petition, the relevant document which forms an integral part of the petition, and then contend that as he has not produced that document alongwith the petition, he was not bound to supply the copy thereof to the returned candidate. Such a result, I am sure, could never have been envisaged by the Legislature while enacting Ss. 81(3), 83(1)(c), 83(2) and 86(1) of the Act. If the argument of Mr. Raval is accepted, that would render the aforesaid provisions nugatory. In order to get out of the rigor of the mandatory provisions referred to above, the petitioner then has to do only this, that he would not annex to the petition, the relevant documents which form an integral part of the petition. If the argument of Mr. Raval is accepted, in that event, the petitioner could not be faulted for not having supplied a true copy of the petition, meant for being supplied to the returned candidate. The argument of Mr. Raval, therefore, obviously cannot be accepted.

34. As I see the petition, the averment about corrupt practice having been committed by Rutumbhara Devi by delivering fiery speeches, with the consent of the Respondent, and the averments about the corrupt practice having been committed by the VHP and the BJP by displaying the video cassette covering the meetings at which Rutumbhara Devi delivered her speeches, and those parties having done so with the consent of the Respondent, is one of the material facts, on which the petitioner relies for the relief prayed in the petition. In any view of the matter, those are facts which would form the particulars of the corrupt practice and that fact is recorded on a video cassette. Therefore, it has not to be said that the video cassette in question forms an integral part of the petition. The copy thereof having not been supplied to the respondent, the petition does not conform to the mandatory requirement of S. 81(3) of the Act, and therefore, the same is liable to be rejected. The submission of Mr. Raval that as the petitioner is not in possession of the video cassette, he cannot be obliged to produce the copy of the video cassette alongwith the petition, nor can he be obliged to supply the copy of the video cassette for being supplied to the Respondent alongwith the copy of the petition cannot be accepted for, the requirements of law as contained in Section 81(3) as also in S. 83(1)(a) and 83(1)(b) of the Act, are mandatory and they have got to be complied with in their letter and spirit. That having not been done in this case, the petition is liable to be rejected.

35. The submission of Mr. Raval that it was only by way of indication of the evidence to be led at the trial that the petitioner, in the petition has referred to the speeches of Rutumbhara Devi and to the video cassettes covering the speeches of Rutumbhara Devi having been displayed at Palampur and at other places has been made, and therefore, non-production of the video cassette alongwith the petition and non-supply of the copy of the video cassette to the respondent would not prove fatal to the election petition, cannot be accepted. As I see the averments in the election petition,

the fact about Rutumbhara Devi having committed corrupt practice by delivering inflammatory speeches, and that fact about the VHP and the BJP having committed corrupt practice by displaying the video cassette covering the proceedings of the meeting at which Rutumbhara Devi addressed the audience, are, both material facts, and those facts are recorded on a video cassette. That cassette, should therefore, have been produced alongwith the petition. That having not been done, the petition is liable to be dismissed in limine. In my opinion, on the averments in the petition, the video cassette forms an integral part of the election petition the non-supply of the copy thereof to the respondent cannot be said to be a minor deviation from the mandatory requirement of S.81(3) of the Act, and it cannot be said that the petitioner has substantially complied with the mandatory requirements of Sec. 81(3) of the Act. As could be seen from the decision in the case of Jagat Kishore Prasad Narain Singh (supra), in the original petition, the name of the offerer of the money was stated to be Shri Munshi Hansda, M.L.A., while in the copy of the petition that was served to the Respondent, the name of the offerer was stated to be Paul Hansda, M.L.A. Even such a variation between the original petition and the copy thereof served to the returned candidate has been held by the Supreme Court to be fatal to the maintainability of the petition. Here in the case before me, not only that in the petition, elaborate averments about the video cassette having been played by the VHP and the BJP with the consent of the Respondent have been made, but elaborate averments about Sadhvi Rutumbhara Devi having made fiery speeches have also been made. Those speeches are said to have been recorded on a video cassette.

In view of the holding of the Supreme Court in the case of M. Karunanidhi (supra) and U. S. Sasidharan (supra), it has got to be said that the video cassette covering the speeches of Rutumbhara Devi which are said to have been displayed at Palampur and other places by the VHP and the BJP did form an integral part of the petition and the non-supply thereof to the respondent cannot be viewed as a mere minor deviation from the mandatory statutory requirements.

36. Having considered the matter from all the relevant angles, and having read the authorities cited at the bar I am convinced that the copy of the election petition supplied to the respondent cannot be said to be the true copy of the original election petition, for the reason that the video cassette referred to in the petition as an integral part of the petition, has not been supplied to the Respondent. Therefore, the petition does not comply with the mandatory requirement of S. 81(3) of the Act, and the same is required to be rejected.

37. In the result, Election Application No. 6 of 1993 is allowed, and Election Petition No. 2 of 1991 is dismissed. Mr. H. L. Patel, L.A. for the Respondent, does not press for the costs of the petition. Hence the parties are left to bear their own costs.

The substance of this decision be intimated to the Election Commission, and the Speaker of the Lok Sabha at the earliest, and the authenticated copy of this judgment be sent to the Election Commission.